

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	EB-07-AT-177
Star Power Communications Corporation)	
Licensee of Radio Station WIQR(AM))	NAL No.: 200732480013
Prattville, AL)	
Facility ID: 8544)	FRN: 0009886755
)	
)	

FORFEITURE ORDER

Adopted: November 5, 2008

Released: November 7, 2008

By the Regional Director, South Central Region, Enforcement Bureau:

I. INTRODUCTION

1. In this *Forfeiture Order* (“*Order*”), we issue a monetary forfeiture in the amount of one thousand five hundred dollars (\$1,500) to Star Power Communications Corporation (“Star Power”), licensee of station WIQR(AM), in Prattville, Alabama, for willful and repeated violation of Sections 11.35(a) and 73.3526 of the Commission’s Rules (“Rules”).¹ The noted violations involve Star Power’s failure to maintain operational Emergency Alert System (“EAS”) equipment, and failure to maintain and make available a complete public inspection file. We also admonish Star Power for its repeated violation of Section 73.1350(a) of the Rules.²

II. BACKGROUND

2. On August 30, 2007, agents of the Commission’s Atlanta Office of the Enforcement Bureau (“Atlanta Office”) conducted an inspection of the AM directional station, WIQR, in Prattville, Alabama during normal business hours with the station’s general manager. The agents found that the station’s EAS encoder/decoder unit was not operational, because it was unplugged from a power source. The station’s general manager stated that he was unaware that the EAS unit was unplugged and stated that the station’s engineer must have unplugged it when the engineer was last there. When plugged back in, no one at the station was able to send an EAS test from the unit. The agents were unable to retrieve any electronically stored data from the unit. The station also had no EAS logs, and the last EAS printout was an alert from the National Weather Service dated May 2, 2007.

3. During the inspection, the agents requested to inspect the station’s public inspection file. The station provided a public inspection file that did not contain any quarterly issues programs lists for any quarter. The general manager and office manager stated that they were unaware of this requirement and admitted that the station had not been compiling quarterly issues programs lists.

4. Finally, the agents observed one of the walls of the plastic fence surrounding one of the

¹ 47 C.F.R. §§ 11.35(a), 73.3526.

² 47 C.F.R. § 73.1350(a).

station's towers lying on the ground, allowing ready access to the base of the tower. The agents observed that tall grass had grown up through the downed portion of the fence. The general manager stated that he was going to replace the plastic fence with a wooden fence but that he hadn't had chance to do it.

5. On October 19, 2007, the station's engineer contacted an agent from the Atlanta Office and provided additional information. He stated that he had not visited the station in several months. He also stated that the plastic fence around the tower was installed in 2004 or 2005.

6. On November 5, 2007, the Atlanta Office issued a *Notice of Apparent Liability for Forfeiture* to Star Power in the amount of nineteen thousand dollars (\$19,000) for the apparent willful and repeated violation of Sections 11.35(a), 73.3526(a) and 73.49³ of the Rules.⁴ Star Power submitted a response to the *NAL* requesting a reduction or cancellation of the proposed forfeiture.

III. DISCUSSION

7. The proposed forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),⁵ Section 1.80 of the Rules,⁶ and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, 12 FCC Rcd 17087 (1997), recon. denied, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*"). In examining Star Power's response, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and other such matters as justice may require.⁷

8. Section 11.35(a) of the Rules states that "EAS participants are responsible for ensuring that EAS Encoders, EAS Decoders and Attention Signal generating and receiving equipment used as part of the EAS are installed so that the monitoring transmitting functions are available during the times the stations and systems are in operation." On August 30, 2007, station WIQR's EAS encoder/decoder was not operational, because it was unplugged from the power source. The station's general manager stated that the station's engineer must have unplugged it. The engineer later stated that he had not visited the station in several months. Once plugged in, no one at the station could demonstrate that the unit was operational, and there was no evidence that an EAS test had been received or sent since May 2, 2007. In response to the *NAL*, Star Power states that it has corrected its failure to maintain operational EAS. However, corrective action taken to come into compliance with the Rules after an inspection is expected, and does not nullify or mitigate any prior forfeitures or violations.⁸ Thus, based on the evidence before us, we find that Star Power willfully⁹ and repeatedly¹⁰ violated Section 11.35(a) of the Rules by failing to

³ 47 C.F.R. § 73.49.

⁴ *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200732480013 (Enf. Bur., Atlanta Office, November 5, 2007) ("*NAL*").

⁵ 47 U.S.C. § 503(b).

⁶ 47 C.F.R. § 1.80.

⁷ 47 U.S.C. § 503(b)(2)(E).

⁸ See *Seawest Yacht Brokers*, Forfeiture Order, 9 FCC Rcd 6099 (1994).

⁹ Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful,' ... means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by this Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

maintain operational EAS equipment.

9. Section 73.3526(a)(2) of the Rules requires broadcast stations to maintain for public inspection, a file containing materials listed in that section.¹¹ Section 73.3526(c)(1) of the Rules states that the file shall be available for public inspection at any time during regular business hours.¹² Section 73.3526(e)(12) of the Rules requires licensees to place in the public inspection file, for each calendar quarter, a list of programs that have provided the station's most significant treatment of community issues during the preceding three month period.¹³ This list is known as the radio issues/programs list. On August 30, 2007, in response to a request to inspect the station's public inspection file during normal business hours, the station was unable to make available any quarterly issues/programs lists. The station's general manager and office manager stated that they did not know the lists were required and admitted that they had not compiled the lists. In response to the *NAL*, Star Power states that it corrected its failure to maintain quarterly issues/programs lists, but, as stated above, corrective action is expected and does not warrant reduction or cancellation of a forfeiture. Thus, based on the evidence before us, we find that Star Power willfully and repeatedly violated Section 73.3526 by failing to maintain a complete public inspection file and willfully violated Section 73.3526 by failing to make available a complete public inspection file.

10. Section 73.49 of the Rules states that "Antenna towers having radio frequency potential at the base... must be enclosed within effective locked fences or other enclosures." It is undisputed that on August 30, 2007, one side of the plastic fencing around one of the station's towers was lying on the ground, allowing ready access to the base of the tower and that the fence had been down for more than one day. It is also undisputed that the terms of station WIQR's station authorization require it to operate with a directional pattern and the use of all of its antennas, which would have caused the tower in question to have had radio frequency potential at its base. Thus, if station WIQR had been operating as authorized, all of its antennas would have required base fences. In its response to the *NAL*, Star Power states that it corrected its fencing violation and erected a new fence around the tower in question. It also claims for the first time that the tower in question didn't have "current going to it since we were broadcasting omni-directional from the middle tower" and that's why they didn't think "time was of the essence" when replacing the plastic fencing. Star Power's general manager later submitted a statement, under penalty of perjury, that the station had been broadcasting in a non-directional mode from approximately July 4, 2007 until a few months ago.¹⁴ Because Star Power asserts that the station operated in an omni-directional mode from on or about July 4, 2007 until a few months before July 2008, the tower in question did not have radiofrequency potential during the inspection and we have no direct evidence to the contrary for the date of the inspection or for the prior dates in which the section of the fence was missing, we cancel the proposed forfeiture associated with the apparent violation of Section 73.49 of the Rules. However, because Star Power admits that it repeatedly operated its station in an omni-directional

¹⁰ As provided by 47 U.S.C. § 312(f)(2), a continuous violation is "repeated" if it continues for more than one day. The *Conference Report* for Section 312(f)(2) indicates that Congress intended to apply this definition to Section 503 of the Act as well as Section 312. See H.R. Rep. 97th Cong. 2d Sess. 51 (1982). See *Southern California Broadcasting Company*, 6 FCC Rcd 4387, 4388 (1991) and *Western Wireless Corporation*, 18 FCC Rcd 10319 at fn. 56 (2003).

¹¹ 47 C.F.R. § 73.3526(a)(2).

¹² 47 C.F.R. § 73.3526(c)(1).

¹³ 47 C.F.R. § 73.3526(e)(12).

¹⁴ Star Power's general manager stated that the station's former chief engineer told him that he had submitted a request for Special Temporary Authority to operate at variance with the station authorization on July 4, 2007. The general manager provided a copy of the signed request. The general manager also claims that, unbeknownst to him, the former chief engineer intentionally failed to submit the request in an attempt to sabotage the station. The Commission's Media Bureau does not have a record of an STA being filed prior to the date of the inspection.

mode when it was required to operate in a directional mode, we admonish it for its repeated violation of Section 73.1350(a) of the Rules, which requires each licensee to maintain and operate its broadcast station “in accordance with the terms of the station authorization.”¹⁵

11. Finally, Star Power requests a reduction of the forfeiture based on its history of compliance with the Rules. We have reviewed the Commission’s records and agree that Star Power has not been the subject of a prior enforcement action. Star Power also asserts that the proposed forfeiture would pose a financial hardship. The Commission has determined that, in general, an entity’s gross revenues are the best indicator of its ability to pay a forfeiture.¹⁶ We have reviewed the financial documentation provided by Star Power and reduce the forfeiture to \$1,500 based on its history of compliance with the Rules and its documented inability to pay.

12. We have examined Star Power’s response to the *NAL* pursuant to the statutory factors above, and in conjunction with the *Forfeiture Policy Statement*. As a result of our review, we conclude that Star Power willfully and repeatedly violated Sections 11.35(a) and 73.3526 of the Rules. However, we reduce the forfeiture for these violations to \$1,500 based on Star Power’s history of compliance with the Rules and documented inability to pay.

IV. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.111, 0.311 and 1.80(f)(4) of the Commission’s Rules, Star Power Communications Corporation **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of one thousand five hundred dollars (\$1,500) for violation of Sections 11.35 and 73.3526 of the Rules.¹⁷

14. **IT IS FURTHER ORDERED** that, the forfeiture in the amount of seven thousand dollars (\$7,000) for violation of Section 73.49 of the Rules proposed in the November 5, 2007 *Notice of Apparent Liability* issued to Star Power Communications Corporation **IS CANCELED**.

15. **IT IS FURTHER ORDERED** that, Star Power Communications Corporation **IS ADMONISHED** for its repeated violation of Section 73.1350(a) of the Rules.

16. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Rules within 30 days of the release of this Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.¹⁸ Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Account Number and FRN Number referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank – Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank TREAS/NYC, and account number 27000001. For payment by credit card, an FCC Form 159 (Remittance Advice) must be submitted. When completing the FCC Form 159, enter the NAL/Account

¹⁵ 47 C.F.R. § 73.1350(a).

¹⁶ See *PJB Communications of Virginia, Inc.*, 7 FCC Rcd 2088, 2089 (1992) (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator’s gross revenues); *Local Long Distance, Inc.*, 16 FCC Rcd 24385 (2000) (forfeiture not deemed excessive where it represented approximately 7.9 percent of the violator’s gross revenues); *Hoosier Broadcasting Corporation*, 15 FCC Rcd 8640 (2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator’s gross revenues).

¹⁷ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4), 11.35, 73.3526.

¹⁸ 47 U.S.C. § 504(a).

number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type code). Requests for full payment under an installment plan should be sent to: Chief Financial Officer -- Financial Operations, 445 12th Street, S.W., Room 1-A625, Washington, D.C. 20554. Please contact the Financial Operations Group Help Desk at 1-877-480-3201 or Email: ARINQUIRIES@fcc.gov with any questions regarding payment procedures. Star Power will also send electronic notification on the date said payment is made to SCR-Response@fcc.gov.

17. **IT IS FURTHER ORDERED** that a copy of this *Order* shall be sent by First Class and Certified Mail Return Receipt Requested to Star Power Communications Corporation at its address of record.

FEDERAL COMMUNICATIONS COMMISSION

Dennis P. Carlton
Regional Director, South Central Region
Enforcement Bureau